IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5415 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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EXIM INC

Versus

P N HEMALATHA

Appearance:

1. Special Civil Application No. 5415 of 2002

MR KAMAL TRIVEDI, SR.ADVOCATE with MR PC KAVINA for Petitioner No. 1-2

MR DN PATEL for Respondent No. 1-2

MR PR NANAVATI for Respondent No. 3

MR MJ THAKORE for Respondent No.4

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 25/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. The learned counsel for the respective respondents waive service of Rule. In the facts and circumstances of the case, the petition has been taken up for final hearing today and is being disposed of by this judgment.

2. Petitioner No.1 - M/s. Exim Inc. and petitioner No.2- M/s. Priya Blue Industries Pvt. Ltd. have filed the present petition under Article 226 of the Constitution for challenging certain orders passed by the Deputy Commissioner of Customs, Bhavnagar in respect of an oil tanker called M.T. Chesapeake ("the Vessel"). Petitioner No.1 claims the ownership of the vessel having purchased the same for an amount of Rs.14 crores. On 13-4-2002, a Memorandum of Agreement (MoA) was entered into between Exim Inc. and M/s. RK Industries (respondent No.4) for the purpose of selling the vessel to respondent No.4 which had agreed to purchase the same for the purpose of breaking it and scrapping it. When the vessel came to Bhavnagar anchorage on 21-4-2002, respondent No.4 contended that the weight of the vessel was less than 17707 M.T. mentioned in the MoA and on that ground respondent No.4 did not show readiness to take delivery of the vessel from petitioner No.1. On 25-4-2002, petitioner No.1 called upon respondent No.4 to accept the vessel and to release the letter of credit for the same, failing which, the Memorandum of Agreement would stand terminated and that petitioner No.1 would be at liberty to deal with the vessel at its discretion.

3. Respondent No.4 filed Admiralty Suit No. 5 of 2002 before this Court on 26-4-2002 and prayed, inter-alia, for arrest of the vessel. In the said suit, petitioner No.1 appeared and opposed the grant of any relief. After hearing the learned counsel for respondent No.4 and the learned counsel for petitioner No.1, by order dated 30-4-2002, a learned Single Judge of this Court refused the prayer for arrest.

4. Since respondent No.4 did not come forward to purchase the vessel in view of the dispute, petitioner No.1 entered into a Memorandum of Agreement dated 30-4-2002 under which petitioner No.2 purchased the vessel from petitioner No.1. The physical delivery certificate was also issued in favour of petitioner No.2. On 1-5-2002, petitioner No.2 deposited about Rs. 19 lacs with respondent No.3 - Port Officer, Alang as beaching charges and also filed the Bill of Entry. Petitioner No.2 also indicated the readiness for payment of customs duty by requesting respondent No.1 - Deputy Commissioner

of Customs to counter-sign the challan for payment of customs duty. Respondent No.1, however, declined to counter-sign challan presented by petitioner No.2 on the ground that respondent No.4 was shown as importer in the original Import General Manifest (IGM) and that, therefore, no objection certificate of respondent No.4 was necessary. Petitioner No.2, however, proceeded to deposit an amount of Rs.2.06 crores towards customs duty for the above vessel in the bank account of the customs authority and requested the respondent authorities for permitting the petitioner to beach the vessel on the plot of petitioner No.2 at Alang.

5. In the meantime, respondent No.4 filed OJ Appeal No.10 of 2002 for challenging the order dated 30-4-2002 of the learned Single Judge. The OJ Appeal came to be dismissed by the Division Bench on 2-5-2002 with an observation that there was no challenge to the observation made by the learned Single Judge that there was an arbitration clause in the Memorandum of Agrement between the petitioner and respondent No.4 and that the said remedy was required to be pursued.

6. On 6-5-2002, the petitioners filed Special Civil Application No.4713 of 2002 making a grievance against non-consideration of the petitioners' application for amendment of IGM in spite of the subsequent Memorandum of Agreement dated 30-4-2002 between petitioner No.1 and petitioner No.2. This Court directed respondent No.1 Deputy Commissioner of Customs, Bhavnagar to consider the question of amendment of IGM without being influenced by the earlier MoA between petitioner No.1 and respondent No.4.

By order dated 8-5-2002 (Annexure "J"), respondent No.1 rejected the said request, observing that she was inclined to believe that petitioner No.2 has been fraudulently claiming to be the importer and therefore, the request made by the petitioners for amendment of the IGM was rejected and on that basis the question of assessing the Bill of Entry filed by petitioner No.2 as the importer did not survive.

Aggrieved by the aforesaid order, petitioner No.2 went in appeal before the Commissioner of Customs. By order dated 23/24-5-2002 (Annexure "L"), the Commissioner (Appeals) set aside the order of respondent No.1 - Deputy Commissioner and remanded the matter for reconsideration in the following terms:-

"In view of the above, the subject O.I.O. is set

aside, and the case remanded back for reconsideration, after taking into consideration the decision of the arbitrator in terms of clause 19 of MOA between seller and M/s. RK. As at this point of time, it cannot be firmly established as to who is the legal importer, the assessment of Bills of Entry, filed by either of the party, should be kept pending, and if the same has been assessed, it should not be given effect to till such time the decision of the arbitrator is received and a fresh order regarding the amendment in IGM, as requested by M/s.PBI is decided. It appears that both M/s.R.K. and PBI i.e. the contending parties, have deposited the amount of Customs duty leviable on the said vessel, which fact needs to be verified by the concerned D.C., the possibility of allowing beaching permission, if a request is made by M/s. Exim Inc., may be examined and necessary order issued, within three days,by taking appropriate bond that no breaking of the said vessel will be undertaken, as it has been pleaded that unnecessary expenses are being incurred for the up keep of the said vessel at the present anchorage due to the subject dispute."

(emphasis supplied)

7. After the aforesaid order, respondent No.1 passed the following orders:-

(i) Detention Memo dated 26-5-2002 (Annexure "M") was issued by Superintendent of Customs, Bhavnagar under instructions from respondent No.1 for detaining the vessel.

(ii) By order dated 28-5-2002 (Annexure "N"), respondent No.1 held that petitioner No.1 was the cash buyer and not the importer of the vessel. Hence, petitioner No.1 cannot be treated as a buyer/importer of the vessel. Beaching permission is always to be granted to the importer for beaching the vessel on his registered plot after completing all customs formalities and payment of duty. Petitioner No.1 does not own the plot at the Ship breaking yard at Alang nor is it importer and has not performed the formalities and paid duty of the vessel. Hence, beaching permission cannot be granted in favour of petitioner No.2 as it is not the importer of the vessel.

(iii) However, by another order of even date i.e. 28-5-2002 (Annexure "O") respondent No.1 granted beaching permission in respect of the vessel in question to respondent No.4 RK Industries subject to the condition that respondent No.4 will submit an undertaking to the effect that the vessel will not be broken till further order as per the order of the Commissioner (Appeals) Customs, Ahmedabad.

8. The aforesaid orders dated 28-5-2002 came to be challenged by the petitioners in Appeal Nos. 87, 88 and 89 of 2002 before the Commissioner (Appeals). In his order dated 31-5-2002, the Commissioner (Appeals) observed, inter-alia, as under:-

"4.2 The grounds on which the rejection has been made were well known at the time passing the OIA and since M/s. Exim Inc. are a foreign seller of the vessel and with a view to ensuring the safety of the vessel and unnecessary heavy expenditures, which are being incurred for the upkeep of the said vessel, the directions to examine the request of seller for beaching the vessel were issued. In spite of examining the issue on this background, the rejection has been done in a mechanical manner and on unsustainable grounds. Since the title is yet to be passed to a legal buyer, so, the said title still remains with the seller. Similar view has been taken by the Hon'ble Gujarat High Court in its judgment, in the case of Munna Scrap Traders vs. Union of India, reported at 2000 (116 ELT 453 (Guj.). Moreover, by virtue of Section 2 (26) of the Customs Act, 1962, owner can also be treated as an importer. So, the concerned Deputy Commissioner's finding that M/s. Exim Inc. is not the importer is not sustainable."

The Commissioner further negatived the finding of respondent No.1 in favour of respondent No.4 - RK Industries by observing that respondent No.4 cannot be treated as a legal buyer as the dispute was still pending before the arbitrator and that such a permission could not have been granted. Even the Port Officer, Alang had refused to grant beaching permission in favour of respondent No.4 for non-receipt of the physical delivery certificate. The Commissioner, thus, held that both the grounds given by respondent No.1 for granting the application in favour of respondent No.4 and rejecting the application of the petitioners were not tenable and

were against the spirit of the order dated 24-5-2002 passed by the Commissioner earlier. The Commissioner, therefore, stayed the permission granted by respondent No.1 in favour of respondent No.4 for beaching the vessel and passed the following order:-

> "Further, it is seen that the said vessel has been detained on 26-5-2002 by Superintendent of Customs, Bhavnagar. In view of the said fact, the Deputy Commissioner, Customs, Bhavnagar is directed to take necessary steps for beaching of the said vessel, to ensure the safety of the vessel and crew members, at an appropriate place in prior consultation with the owner of the vessel i.e. M/s. Exim Inc."
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> (emphasis supplied)

9. Even after the aforesaid order dated 31-5-2002, respondent No.1 passed order dated 1-6-2002 reiterating that respondent No.1 did not accept that petitioner No.1 was the owner of the vessel. Yet in order to comply with the stay order, petitioner No.1 was directed to authorise some person to act on its behalf. Respondent No.1 ultimately gave the following direction in the aforesaid order dated 1-6-2002:-

> "It is also conveyed to you that, permission for beaching the vessel at Plot No.V-1, Sosiya cannot be given as per the said stay order. If agreed, permission to beach the vessel will be given at any of the three plots V-8, V-9, V-10 Sosiya which are in the possession of Gujarat Maritime Board, in order to ensure safety of the vessel and the crew."

The aforesaid order dated 1-6-2002 came to be challenged by the petitioners in Special Civil Application No.5332 of 2002. This Court relegated the petitioners to alternative remedy of appeal with the following observations:-

> " It would be in fitness of things if the petitioners approach the Appellate Authority pointing out the course of action and the attitude adopted by respondent No.1 in relation to stay order passed by the Appellate Authority on 31st May, 2002. The Appellate Authority shall consider the aspect as to whether the respondent No.1 has acted in consonance with the spirit of the orders passed by the Appellate Authority or whether respondent No.1 has exceeded the

directions issued by the Appellate Authority.

In the meantime, it is hereby directed that respondent No.1 shall not insist on beaching the vessel at the plots mentioned in order dated 1st June, 2002 and shall ensure the safety of the vessel and crew members. The Appellate Authority shall decide the matter on a priority basis preferably within two to three days and the petitioner shall approach within a period of twenty four hours i.e. latest by 5th June, 2002.

Before I conclude, it is necessary to state that the entire controversy and this litigation could have been avoided if respondent No.1 had acted with a sense of responsibility which is expected from an Officer of the rank of Deputy Commissioner of Customs."

(Respondent No.1 in the present petition is the same Dy. Commissioner)

10. The petitioners accordingly approached the Commissioner (Appeals). In his order dated 5-6-2002, the Commissioner observed that respondent No.1 had again forgotten the spirit of the various orders passed by the Commissioner and without consulting petitioner No.1, respondent No.1 offered them plot Nos. V-8, V-9 and V-10, which as stated by petitioner No.1 are adjacent to plot Nos. V-7 belonging to respondent No.4 and these plots are not developed for the purpose of beaching. The Commissioner also noted that respondent No.1 had commented on the order of the Appellate Authority by saying that she cannot consider petitioner No.1 M/s. Exim Inc. as owner of the vessel. The Commissioner also observed that "either respondent No.1 had not understood the orders properly or she did not want to act in a responsible manner." The Commissioner ultimately disposed of the application in the following terms:-

"As Plot No. V-1 belongs to M/s. PBI (Petitioner No.2) and, like M/s. R.K. Industries (Unit No.2) (Respondent No.4), they too have not been treated as a legal importer by earlier Order-in-Appeal No.446/2002 (102-CCP) Cus/Commr(A)/Ahd, dated 23-5-2002 (Annexure L), the permission to M/s. Exim Inc. for beaching the vessel at Plot No.V-1 cannot be considered and, therefore, the said request is rejected.

As regards the anchoring of vessel beyond

500 feet from high tide mark is concerned, the same may be allowed at a safe place for ensuring the safety of the said vessel and crew members as has been directed by the High Court by taking an undertaking from M/s. Exim Inc. that they will take all necessary steps to ensure that vessel does not come to be beached at Plot No.V-1."

(emphasis supplied)

11. Petitioner No.1, therefore, again approached respondent No.1 with the aforesaid order of the Commissioner (Appeals) with an undertaking dated 5-6-2002 that petitioner No.1 shall take all necessary steps to ensure that the vessel does not come to be bleached at plot No.V-1. Respondent No.1, however, sent a communication dated 6-6-2002 expressing doubts about the efficacy of the order of the Commissioner (Appeals) and relying on the opinion of the Port Officer, Alang respondent No.1 stated that anchoring of the vessel upto 1500 ft. technically would mean the vessel will be bleached or grounded on the plot of petitioner No.1; at high tide the vessel may drift as the engine is switched off after beaching posing grave risks to other vessels. Respondent No.1, therefore, sought a clarification whether the vessel has to be permitted to be beached as per the order dated 5-6-2002 of the Commissioner (Appeals). Petitioner No.1 went on requesting respondent No.1 that respondent No.1 was unmindful of the damages and daily expenses being suffered by petitioner No.1 and that respondent No.1 was disobeying the orders of the appellate authority without any lawful justification.

12. Both the petitioners herein filed the present petition on 10-6-2002 praying for various reliefs including quashing the orders of respondent No.1 and for directions that respondents may permit the petitioners to beach the vessel at plot No.V-1, Ship breaking yard at Alang and for a declaration that respondents No.1 and 2 i.e. the authorities under the Customs Act have no authority to prevent the petitioners from cutting the vessel as they choose.

On 11-6-2002, the Court issued notice to the respondents and on 13-6-2002, the learned Vacation Judge made, inter-alia, the following observations:-

"2. Mr PR Nanavati appears on behalf of Respondent No.3 (Port Officer, Alang) and states that the Port Officer, Captain Y.P. Deulkar is present in the Court as directed on 11-6-2002 by this Court. It may be noted that the Court had

put a question to Captain Deulkar to the effect as to whether it is possible to comply with the order of Commissioner (Appeals), especially direction in Paragraph-7 regarding anchoring of the vessel. It has been stated by the Port Officer that it is possible to comply with the said direction and the vessel can be safely anchored as directed."

It appears that in the meantime respondent No.1 passed order dated 10-6-2002 with the following operative directions:-

"As per Commissioner (Appeals) order the vessel has to be allowed to be "anchored" beyond 500 feet from the high tide mark ensuring the safety of vessel and crew members. Since, the vessel is likely to be beached if it comes within 1500 feet, it has to be anchored beyond that distance. Further, for safe anchorage, the vessel should be more than 2 miles away from the nearest shore. However, if the vessel is moved from the anchorage and anchored at place beyond 2 miles due to the heavy currents the vessel is likely to drift and cause a risk to other vessels, which are brought in for beaching at other plots.

Hence, in pursuance of the order and taking into consideration the Port Officer's opinion and to ensure the safety of the vessel and crew, the vessel is allowed to continue to be anchored at Bhavnagar anchorage/ Alang anchorage."

Respondent No.1 based her order on the opinion dated 7-6-2002 (Annexure IV) of the Port Officer, Alang.

13. At the hearing of this petition, Mr KB Trivedi, learned Senior Counsel with Mr PC Kavina for the petitioners have made the following submissions:-

(i) Time and again the Commissioner (Appeals) had given directions to respondent No.1 to consider petitioner No.1 as owner/importer of the vessel and to examine the possibility of allowing petitioner No.1 beaching permission and to issue necessary orders within three days by taking appropriate bond that no breaking of the vessel will be undertaken. After the aforesaid order dated 24-5-2002, the Commissioner (Appeals) had

again passed another order dated 31-5-2002 directing respondent No.1 - Deputy Commissioner to take necessary steps for beaching of the vessel to ensure the safety of the vessel and crew members at an appropriate place in prior consultation with the owner of the vessel i.e. petitioner No.1.

Instead of the aforesaid categorical directions, respondent No.1 had defied the orders and not only rejected the application made by petitioner No.1 Exim Inc. for beaching permission but respondent No.1 went to the extent of granting beaching permission in favour of respondent No.4 although the Commissioner had specifically observed that it was not firmly established as to who was the legal importer and the assessment of Bill of Entry filed by either petitioner No.2 or respondent No.4 should be kept pending and that if any such assessment was made, it should not be given effect to till arbitrator decides the dispute between the parties.

Strong reliance is placed on the decisions of the Apex Court in Bhopal Sugar Industries vs. Income Tax Officer, AIR 1961 SC 182, Assistant Collector of C.E. vs. Dunlop India Ltd. 1985 (19) ELT 22 and Union of India vs. Kamlakshi Finance Corporation Ltd. 1991 (55) ELT 433 in support of the contention that the a subordinate administrative or quasi-judicial authority cannot be permitted to defy the orders of the higher appellate authority.

(ii) It is further submitted that all along the Commissioner (Appeals) appreciated the grievance of the petitioners, particularly, petitioner No.1 that on account of the dispute raised by respondent No.4, and the orders passed by respondent No.1, petitioner No.1 was required to keep the vessel at an anchorage far away requiring petitioner No.1 to incur unnecessary expenses for upkeep of the vessel as crew members had to be retained on the vessel and the engine was required to be run. It is stated that in this view of the matter, the first petitioner is required to incur expenses of about 3.5 to 4 lacs everyday.

(iii) It is submitted that even if the first petitioner may not be permitted to beach the vessel at plot

No.V-1 belonging to petitioner No.2, atleast as per the order of the Commissioner (Appeals) the first petitioner is entitled to have the vessel at a distance of 500 feet from the plot boundary of plot NO.V-1 to ensure safety of the vessel and crew members.

(iv) However, respondent NO.1 has all along considered the matter only in favour of respondent No.4 by first granting the beaching permission in favour of respondent No.1 in defiances of the Commissioner's order dated 24-5-2002 and, thereafter, again directing the first petitioner to beach the vessel on plots Nos. V-8, V-9 or V-10 which are adjacent to plot No.V-7 belonging to respondent No.4.

14. On the other hand, Mr DN Patel, learned Senior Standing Counsel for respondents No.1 and 2 and Mr MJ Thakore, learned counsel for respondent No.4 - RK Industries (Unit II) have opposed the petition and submitted as under:-

(i) the impugned orders passed by respondent No.1 are capable of being challenged in appeal and in fact appeals are already filed by the petitioners against the orders dated 28-5-2002 and, therefore, the present petition is not required to be entertained.

The letter dated 6-6-2002 (Annexure "V") written by respondent No.1 to the Commissioner (Appeals) merely seeks clarification of the Commissioner's order dated 5-6-2002 and, therefore, the same cannot be the subject matter of challenge. The last order dated 10-6-2002 passed by respondent No.1 has not been challenged by the petitioners. It is, therefore, submitted that this Court may not exercise its jurisdiction under Article 226 of the Constitution in respect of the orders at Annexures "M", "N", "O", "R" and "V".

(ii) As far as the prayer for a direction that the petitioners may be permitted to beach the vessel at plot No.V-1 is concerned, the Commissioner (Appeals) has already rejected the said prayer in the orders dated 31-5-2002 and 5-6-2002 and the petitioners have not challenged the said order of the Commissioner (Appeals) before CEGAT and, therefore also, the present petition is not required to be entertained.

(iii) The Commissioner (Appeals) has permitted only anchoring of the vessel and not beaching and, therefore, the petitioners or even petitioner No.1 cannot be permitted to bring the vessel near the seashore but it will have to be kept away at a distance of 2 nautical miles as suggested by the Port Officer for the purpose of keeping the vessel in an anchored condition.

15. The learned counsel for respondent No.4 has further submitted that respondent No.4 has challenged the order dated 24-5-2002 of the Commissioner (Appeals) before CEGAT and that the subsequent orders passed by the Commissioner (Appeals) on 31-5-2002 and 5-6-2002 were passed without giving respondent No.4 any opportunity of being heard. Hence, the said orders are not required to be implemented by respondent No.1.

16. As far as respondent No.3 - Port Officer, Alang is concerned, Mr PR Nanavati, learned counsel for the said respondent submits that respondent No.3 is not concerned with the dispute between petitioner No.2 and respondent No.4. It is, however, pointed out that if petitioner No.1 is to be permitted to beach the vessel at any place other than a ship breaking plot allotted to a party, the Board is entitled to charge fees in accordance with the statutory regulations.

As far as the controversy about beaching and anchoring is concerned, it is submitted that if the vessel is anchored at a distance of 2 nautical miles from the Alang seashore, the vessel will have to keep engine running and attended to by the crew members and if the vessel is brought at a distance of about 500 feet away from plot No.V-1 or any other ship breaking plot, that my result into beaching or grounding of the vessel.

17. Having heard the learned counsel for the parties, it does appear to us that respondent No.1 Deputy Commissioner of Customs at Bhavnagar never wanted to act in compliance with the orders passed by the Commissioner (Appeals) on 24-5-2002 and 31-5-2002. Respondent No.1 completely overlooked the fact that the Commissioner (Appeals) had clearly stated that there was a dispute between respondent No.4 - RK Industries on the one hand and respondent No.2 - Priya Industries on the other hand as to who was the legal buyer of the vessel in question and that, therefore the assessment of the Bills of Entry filed by either of the parties was required to be kept pending and no effect was to be given to the decision, if

any, on that issue. What appealed to the Commissioner (Appeals) was that during pendency of the dispute, some interim arrangement was required to be made so that unnecessary expenses for upkeep of the vessel and for the crew members on the vessel were not required to be incurred by petitioner No. 1 on account of the pending dispute between the parties. In order to avoid such expenditure, the vessel had to be kept in such a position that the crew members could leave the vessel and the vessel engine would not be required to be run. For that limited purpose, the task was required to be entrusted to petitioner No.1 who is admittedly the owner of the vessel.

18. Both respondent No.4 - RK Industries and petitioner No.2 - Priya Industries claim to have certain rights on the basis of the Memorandum of Agreements dated 16-4-2002 and 30-4-2002 respectively. However, those claims are now the subject matter of the dispute before the arbitrator and, therefore, the Commissioner (Appeals) was justified in holding in the order dated 23/24-5-2002 that petitioner No.1 - Exim Inc. may be treated as owner/importer of the vessel and the vessel may be permitted to be beached upon request made by petitioner No.1 - Exim Inc.. Respondent No.1, however, insisted in her order dated 28-5-2002 that petitioner No.1 - Exim Inc. was not the importer and respondent No.1 not merely rejected the application of petitioner No.1 - Exim Inc. for beaching permission but granted beaching permission in favour of respondent No.4 although the Commissioner had clearly directed that neither respondent No.4 nor petitioner No.2 was to be considered as the importer pending the dispute before the arbitrator.

Even when in his order dated 31-5-2002 the Commissioner found fault with the Deputy Commissioner's order dated 28-5-2002 granting beaching permission in favour of respondent No.4, respondent No.1 subsequently granted beaching permission, purportedly and apparently in favour of petitioner No.1 but requiring the said petitioner to beach the vessel on any of the three plots No.V-8, V-9 and V-10 at Sosia which are adjacent to plot No.V-7 belonging to respondent No.4. Of course, the said three plots No.V-8, V-9 and V-10 are in possession of the Gujarat Maritime Board and, therefore, according to respondent No.1 and her counsel they can be considered to be neutral plots. Nonetheless the fact remains that even the Commissioner (Appeals) has found the said order to be in defiance of his orders dated 24-5-2002 and 31-5-2002 and provoked the Commissioner (Appeals) to observe that either respondent No.1 has not understood the orders

properly or she does not want to act in a responsible manner. Even this Court was constrained to make the following observations on 4-6-2002:-

> "Before I conclude, it is necessary to state that the entire controversy and this litigation could have been avoided if respondent No.1 had acted with a sense of responsibility which is expected from an Officer of the rank of Deputy Commissioner of Customs."

19. It appears to us that once the Commissioner (Appeals) passed the orders dated 24-5-2002 and 31-5-2002, respondent No.1 ought to have considered the application of petitioner No.1 for the beaching permission in light of the observations made by the Commissioner (Appeals) and respondent No.1 was not justified in refusing to grant the application of petitioner No.1 - Exim Inc. for beaching permission. In neither of those orders, the Commissioner (Appeals) had made any observation regarding anchoring of the vessel and all that respondent No.1 - Deputy Commissioner was required to do was to consider the application of petitioner No.1 for beaching of the vessel. There was no ground for rejecting the said application. It is only subsequently when the Commissioner (Appeals) received the objection from respondent No.4 for grant of beaching permission to petitioner No.1 on plot No.V-1 that the Commissioner made a variation in his directions and directed anchoring of vessel beyond 500 feet of the high tide mark without beaching the vessel on plot No.V-1. Respondent No.1 who has been consistently ensuring that petitioner No.1 is not permitted to beach the vessel on plot No.V-1, (which was obviously contrary to and in defiance of the orders of the Commissioner (Appeals) rendered on 24-5-2002 and 31-5-2002), has now latched on to the word "anchoring" used by the Commissioner (Appeals) and on the opinion of the Port Officer, Alang that anchoring may be done at a distance of 2 nautical miles from the seashore, has insisted that petitioner No.1 must keep the vessel in an anchored condition, even if that may mean that petitioner No.1 has to go on incurring expenses for keeping the vessel with engine running and crew members on board as that is the necessary consequence of anchoring the vessel.

20. Instead of keeping in focus the letter and spirit of the order of the Commissioner (Appeals) that pending the dispute raised by respondent No.4 before the arbitrator, which is likely to take sometime, petitioner

No.1 was required to be spared from incurring the expenses for the crew members and keeping the vessel engine running (which runs into Rs.3.5 to 4 lacs per day), respondent No.1 seems to have kept only one goal for all her orders that petitioners or even petitioner No.1 must not be allowed to beach the vessel on or even near plot No.V-1 belonging to petitioner No.2. In this set of circumstances, it is not possible to accept the submission made on behalf of respondent No.1 that respondent No.1 has been acting bonafide or that respondent No.1 has not defied the orders of the Commissioner (Appeals).

21. The last order dated 10-6-2002 passed by respondent No.1 requiring petitioner No.1 to keep the vessel at anchorage point two miles away from the seashore is also in the same vein and with the same thread which has been running through all her orders. Apart from the fact that the said order was served upon petitioner No.1 after the filing of the present petition, when the petitioners, particularly, petitioner No.1 has been consistently requesting that petitioner No. 1 may be permitted to beach the vessel if not on plot No.V-1 atleast near plot no.V-1 at a distance of about 500 feet which request was granted by the Commissioner (Appeals), we do not think that absence of any formal challenge to the said order dated 10-6-2002 should preclude petitioner No.1 from getting appropriate relief in consonance with the orders dated 24-5-2002, 31-5-2002 and 5-6-2002 passed by the Commissioner (Appeals) in favour of petitioner No.1.

22. As regards the contention that respondent No.4 has challenged the order dated 24-5-2002 before the CEGAT, in the facts and circumstances of the case and looking to the urgency of the matter, particularly, the expenses to which petitioner No.1 is put on account of the dispute raised by respondent No.4 which is going to take some time, we are of the view that interests of justice require us to pass the appropriate orders by way of an interim temporary arrangement. Respondent No.4 has been heard through its learned counsel and therefore, we do not think that this controversy about the interim arrangement should be allowed to remain alive before any other forum except, if at all, before the Hon'ble Supreme Court.

23. In view of the above discussion, the petition is allowed. Respondent Nos. 1 and 3 are directed to implement the Commissioner (Appeals) order dated 5-6-2002 in the backdrop of the Commissioner's order dated

24-5-2002 and 31-5-2002 so as to spare petitioner No.1 from incurring the expenses for keeping crew members on board and engine of the vessel running and with that object in mind, respondents No.1 and 3 shall permit petitioner No.1 to beach the vessel in front of but away from plot No.V-1, Shipbreaking Yard at Sosia (Along), at a distance between 500 feet to 1000 feet away from the high tide mark subject to the following conditions:-

(i) Petitioner No.1 shall comply with all the statutory requirements for the purpose but while considering the same, respondent No.1 shall not consider any objection from respondent No.4; and respondents No.1 and 3 shall proceed on the basis of the orders passed by the Commissioner (Appeals) on 24-5-2002, 31-5-2002 and 5-6-2002

(ii) Petitioner No.1 through its Principal Officer, shall file an undertaking before this Court as under:-

(a) Petitioner No.1 shall not beach the vessel on plot No.V-1 at Alang Shipbreaking Yard, Sosia or any other shipbreaking plot;

(b) In case the petitioners lose before the arbitrator and respondent No.4 ultimately succeeds, the petitioners shall facilitate the shifting of the vessel to plot No.V-7 which is presently allotted by the Gujarat Maritime Board to respondent No.4;

If for any reason, this is either not possible or practicable, the petitioners shall permit respondent No.4 to break the vessel where it may be grounded;

(c) Until the dispute between the parties is resolved, the petitioners shall not commence any ship breaking operations;

(iii) The petitioners to pay charges to Gujarat Maritime Board.

(iv) For a period of three months from today, the petitioners shall not allow an other vessel to be beached on or in front of plot No.V-1.

It will be open to respondent No.4 to move this

Court for extension of this period in case the petitioners do not cooperate for expeditious disposal of the proceedings before the arbitrator/s in respect of the vessel in question. In case the arbitration proceedings are not concluded on account of any non-cooperative attitude on the part of respondent No.4, it will be open to the petitioners to move this Court for modification of this direction;

In view of the aforesaid directions, it is not necessary to consider the other reliefs prayed for by the petitioners.

24. The learned counsel for the petitioners state that its agent Alang Shipping Services Pvt. Ltd. has received on 24-6-2002 photocopies of seven documents from respondent No.1 but the same are not legible and they do not bear the endorsement of respondent No.1 that the same are verified with the original. Such endorsement would be required for production of the documents before the arbitrator.

If the petitioners make another request for legible copies of such documents with endorsement of verification, respondent No.1 shall furnish the legible copies of the documents with proper verification at the petitioners' costs.

25. The petition is accordingly allowed in terms of the aforesaid directions contained in paras 23 and 24 hereinabove.

Rule is made absolute to the aforesaid extent.

26. Liberty to apply in case of difficulty.

27. At this stage, Mr MJ Thakore, learned counsel for respondent No.4 prays that the operation of this order may be stayed for sometime to enable respondent No. 4 to have further recourse in accordance with law.

In view of the fact that the order has been required to be passed in view of the urgency pointed out by petitioner No.1 and also in view of the safeguards imposed by us which will take care of the interests of respondent No.4 in case of its success before the arbitrator, the request is not granted.

(M.S. Shah,J) (K.A. Puj, J)

zgs/-